

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**PAULETTE KAMPHAUS**

Claimant

VS.

**CESSNA AIRCRAFT COMPANY**

Respondent

Self-Insured

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Docket No. 268,291

**ORDER**

Claimant appeals the October 28, 2002 Award of Administrative Law Judge John D. Clark. Claimant was denied benefits beyond her functional impairment after the Administrative Law Judge found claimant's post-injury job search violated the policies set forth in *Foulk*.<sup>1</sup> The Appeals Board (Board) heard oral argument on March 21, 2003.

**APPEARANCES**

Claimant appeared by her attorney, Kelly W. Johnston of Wichita, Kansas. Respondent appeared by its attorney, Kirby A. Vernon of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

**ISSUES**

- (1) What is the nature and extent of claimant's disability?

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<sup>1</sup> *Foulk v. Colonial Terrace*, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995).

- (2) Did claimant violate the policies set for in *Foulk*,<sup>2</sup> resulting in her award being limited to her functional impairment?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets forth findings of fact and conclusions of law in some detail, and it is not necessary that those be restated herein. The Board adopts those findings as its own.

Claimant suffered accidental injury on August 27, 1999, while working for respondent. The injuries further resulted from an accumulation of microtraumas over a period through her last day worked of April 24, 2000.

Claimant underwent surgery with J. Mark Melhorn, M.D., and also was treated by several other doctors after she was diagnosed with medial epicondylitis bilaterally and bilateral carpal tunnel syndrome. The Administrative Law Judge awarded claimant a 15 percent impairment to the body as a whole on a functional basis based upon the opinion of Peter V. Bieri, M.D., board certified by the American Academy of Disability Evaluating Physicians. Dr. Bieri's functional impairment for claimant's bilateral carpal tunnel syndrome and bilateral epicondylitis was rendered pursuant to the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

After claimant was treated and returned to work for respondent, she was offered a training program in sheet metal. This training program would have met the restrictions placed upon claimant by her examining and treating physicians. Claimant, however, refused to undergo the training. Four other people in claimant's department accepted the training and all were placed with respondent in accommodated jobs after the conclusion of the training. Those jobs were designed to meet the restrictions placed upon those employees. Respondent's representative testified that had claimant completed the training, she would also have been placed in a job, paying a comparable wage, within the restrictions placed upon her by her examining and treating physicians.

The Administrative Law Judge, citing *Foulk*, found claimant had not made a bona fide effort to obtain post-injury employment. He also found that claimant's refusal to accept the training was tantamount to bad faith and, after imputing the wage claimant would have

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<sup>2</sup> *Foulk, supra.*

earned had she accepted the training, limited claimant to her functional impairment, as the accommodated job would have paid claimant a comparable wage. Therefore, pursuant to K.S.A. 1999 Supp. 44-510e, claimant would have been earning at least 90 percent of her pre-injury wage. The Board affirms the Administrative Law Judge's determination that claimant should have attempted the sheet metal job. Her refusal to attempt that training violated the principles set forth in *Foulk*. Claimant is, therefore, limited to her functional disability of 15 percent to the body as a whole.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated October 28, 2002, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2003.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Kelly W. Johnston, Attorney for Claimant  
Kirby A. Vernon, Attorney for Respondent  
John D. Clark, Administrative Law Judge  
Director, Division of Workers Compensation